

REMARKS/ARGUMENTS

Claims 1-24 stand rejected in the outstanding Official Action. Claim 2 has been cancelled without prejudice and claims 1, 3, 5 and 18 amended. As a result, claims 1 and 3-24 remain in this application.

The Examiner's acknowledgment of Applicants' claim for foreign priority and receipt of the certified copy of the priority document is very much appreciated. Additionally, the Examiner's indication of acceptance of the originally filed formal drawings is appreciated.

Applicants note that the present application is a national phase entry of a PCT application and that Applicants submitted concurrent with filing of this national phase entry an Information Disclosure Statement citing three "other documents" on the appropriate PTO Form 1449. While the Examiner has initialed as being considered the U.S. patent documents and the foreign patent document noted thereon, he has crossed through the three "Other Documents" and has noted "not available" in the margin adjacent thereto.

It is further noted that the burden is on the U.S. PTO to obtain copies of documents cited in conjunction with the International application, from which the national phase application depends. In this instance, the U.S. PTO should have contacted and obtained copies of the three "other documents" from WIPO and it is under that obligation.

Moreover, the Patent Office has requested that applicants refrain from submitting copies of prior art documents which are referenced in the PCT International application and instead has requested that applicants only submit PTO Form 1449. Applicants have complied with the PTO requirement in this matter and therefore reconsideration of the Examiner's refusal to consider the "other documents" cited in Applicants' PTO Form 1449 is requested. In the event the Examiner

is unable to obtain copies of these references, Applicants attach copies of these three "Other Documents" to this response.

Claims 1-11 and 13-24 stand rejected under 35 USC §102 as being anticipated by EP '216 (EP 1152216). The Court of Appeals for the Federal Circuit has noted in the case of *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 USPQ 481, 485 (Fed. Cir. 1984) that "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." Therefore, to support the anticipation rejection, EP '216 must disclose each and every structure set out in the claim.

Independent claim 1 has been amended to specify that the forcing means comprises n forcers where n is an integer and is greater than or equal to the number 2. Independent claim 18 also specifies that the forcing means comprises n where n is an integer and is greater than or equal to 2. In both claims the forcer is specified as being "distributed at angular intervals." Because EP '216 fails to disclose forcers distributed at angular intervals, it clearly fails to disclose or render obvious the subject matter of Applicants' independent claims 1 and 18.

Moreover, the first line of Applicants' claims 1 and 18 specify a micro-electromechanical system (MEMS) which is a specific type of structure known to those having ordinary skill in the art. Applicants' specification, paragraph 2, confirms that MEMS has a broad definitional understanding by those of ordinary skill in the art. However, there is no disclosure in EP '216 to suggest that the structure disclosed therein falls within the scope of the definition of "MEMS" either as known by those of ordinary skill in the art or as set out in Applicants' specification.

Accordingly, lacking the disclosure in EP '216 of a "MEMS" or forcers which are "distributed at angular intervals" around an oscillatory member, it is submitted that claims 1-11 and 13-24 are patentable over EP '216.

Claims 12-16 stand rejected under 35 USC §103 as unpatentable over EP '216 in view of Iguchi (U.S. Patent 5,587,529). Inasmuch as claims 12-16 ultimately depend from Applicants' claim 1, the above comments distinguishing claim 1 from EP '216 are herein incorporated by reference. The Examiner sets forth no allegation that the Iguchi reference teaches either a "MEMS" device or teaches the distribution of forcers at angular intervals around the oscillatory member. As a result, Iguchi does not supply the missing structures required by Applicants' independent claims 1 and 18, and therefore even if Iguchi is combined with EP '216, it cannot disclose or render obvious the subject matter of claim 1, let alone the subject matter of claims 12-16. Therefore, any further rejection of claims 12-16 under 35 USC §103 is respectfully traversed.

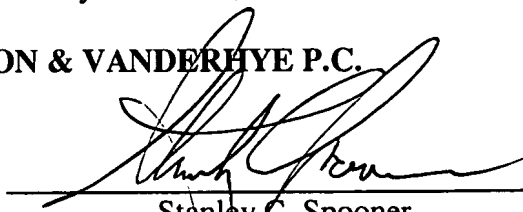
Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1 and 3-24 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of these claims, he is respectfully requested to contact Applicants' undersigned representative.

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Appl. No. 10/507,113
May 23, 2006

Respectfully submitted,

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